

THE PROBATE COURT AND YOU

**The Probate Courts of Connecticut
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Compliments of your probate court:

NOTES: 1) As used in this pamphlet, words referring to the masculine gender may be applied to females, and words referring to the feminine gender may be applied to males. 2) A number of probate-related applications and other forms are available on the Judicial Branch's website: www.jud.state.ct.us. (click on "Court Forms" under "Quick Links"). Forms are also available at the probate court.

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INTRODUCTION

Connecticut is divided into 123 probate districts, each of which is presided over by a Judge of Probate who is elected to office for a four-year term.

Probate Courts have jurisdiction over many matters:

- 1) probating wills and the administration of estates;*
- 2) overseeing testamentary and living trusts;*
- 3) determining title to real and personal property;*
- 4) construing the meaning of wills and trusts;*
- 5) appointing guardians for the mentally retarded;*
- 6) appointing conservators of the person and the estate of incapable individuals;*
- 7) committing those suffering from mental illness, alcoholism, or drug addiction to an appropriate facility;*
- 8) removing unfit parents as guardians of their children;*
- 9) terminating the parental rights of parents who cannot fulfill their parental responsibilities;*
- 10) granting adoptions;*
- 11) granting name changes;*
- 12) other matters.*

Sometimes the issues presented to the Probate Courts are complex and difficult. Therefore, it is important that you seek competent professional advice, so that your legal rights are fully protected. Although this pamphlet is not a substitute for such assistance, it has been designed to give you an overview of probate court operations, with specific emphasis on the procedures that are to be followed in probating a will or administering an estate. The probate judge and staff will be happy to answer your procedural questions, but they are not allowed to give you specific legal advice.

Questions . . . and Answers

1. Why Do Probate Courts Become Involved in the Settling of Decedents' Estates?

When a person who owns property dies, the Probate Court becomes involved to oversee the division of property among those persons legally entitled to it. If the person, referred to as the "decedent," left a will, the division of property will be carried out according to the wishes of the decedent as set forth in the will. (The process of proving that a will is genuine and distributing the property in it is known as "probating" a will.) If the decedent did not leave a will, his or her property will be divided according to Connecticut's laws of "intestacy." (See the answer to question number 15.) In addition to overseeing the distribution of the estate, the Probate Court will insure that any debts of the decedent, funeral expenses, and taxes are paid before distributing the remaining assets of the estate.

2. When Is It Necessary to Open an Estate?

An estate must be opened if a decedent owned properties at the time of her death in her name alone or together with others, but not in survivorship. A court order is required to transfer this type of property to the proper party.

3. What Does "In Survivorship" Mean, and Must Survivorship Property Be Reported to the Probate Court?

The placing of a savings account, shares of corporate stock, bonds or real estate "in survivorship" with another means that each of the named parties has an undivided equal interest in the monies, stocks, bonds, or real estate during their joint lives. This form of ownership grants to the joint owner(s) who survives ownership of all of the monies, stocks, bonds, or real estate immediately upon the death of the joint owner. Survivorship property must be reported to the Probate Court on the Connecticut estate tax return required to be filed with the Court.

4. What Taxes Might Be Due at the Time of Death?

Taxes payable as a result of death include one to the federal government called the Federal Estate Tax, which is reported on federal form 706 and another to the State of Connecticut known as the Connecticut Estate and Gift Tax, which is reported on form CT 706/709. There may also be taxes payable to other states in which the decedent owned property. In addition, there may be income taxes, property taxes, and other taxes due from a decedent if these taxes accrued prior to death. It is the fiduciary's responsibility to ascertain and pay such taxes. Fiduciaries are also responsible for reporting income received during estate administration.

5. How Does the Connecticut Estate and Gift Tax Operate?

Effective as of June 30, 2005, the Connecticut Succession Tax does not apply to decedents dying on or after January 1, 2005. Public Act 05-251 accelerated the phase-out of the Connecticut Succession Tax, replacing it with a unified Connecticut Estate and Gift Tax. The Connecticut Estate and Gift Tax is applicable to Connecticut taxable estates of more than two million dollars and includes Connecticut taxable gifts made on or after January 1, 2005.

As of the effective date of the act, (June 30, 2005), no Connecticut Succession Tax Returns will be required with reference to deaths occurring on or after January 1, 2005. However, estate tax returns will be required in each estate. For Connecticut taxable estates of more than two million dollars, the fiduciary must file an original Connecticut Estate and Gift Tax Return, Form CT-706/709 with the commissioner and a copy with the probate court for the district in which the decedent resided on the date of death. If the decedent was a nonresident of Connecticut at the time of death, the original form must be filed in the probate district where the decedent's real property or tangible personal property was located within Connecticut. The filing deadline is nine months from the date of death, and interest and penalties will accrue from that date.

The fiduciary must send any tax due directly to the Department of Revenue Services with a cover letter referencing the name of the estate. The Department of Revenue Services will review the Form CT-706/709 and issue its tax assessment accordingly. Forms CT-706/709 and CT-706 NT are available at each of Connecticut's probate courts. Any further inquiries about the Connecticut Estate and Gift Tax should be directed to the Department of Revenue Services, 25 Sigourney St., Hartford, CT 06106.

The procedure is different for Connecticut taxable estates of two million dollars or less. The fiduciary must file Form CT-706NT, Connecticut Estate Tax Return (For Nontaxable Estates), only with the probate court. If the judge of probate believes that the estate is not subject to tax on the basis of this return, the judge shall issue a written opinion setting forth the reasons for such judge's opinion. The filing deadline is nine months from the date of death.

*For those decedents who died before January 1, 2005, the prior laws and forms concerning the Connecticut Succession Tax and the Connecticut Estate Tax still apply. Please contact the Department of Revenue Services at (860) 297-5737 for further information.

6. Is the Connecticut Estate and Gift Tax Determined in the Same Manner as the Federal Estate Tax?

No. Although the Connecticut Estate and Gift Tax, like the federal estate and gift tax, is a unified system of taxing gifts and estates, there is no longer any direct connection between the state and federal taxes. With respect to individuals dying on or after January 1, 2005, the Connecticut Estate and Gift Tax will be determined with reference to the tax table set forth in C.G.S. §12-391(g), as amended by Public Act 05-251, §69. The tax applies to Connecticut taxable estates of more than two million dollars, including Connecticut taxable gifts made on or after January 1, 2005. "Connecticut taxable estate" means (A) the gross estate less allowable deductions, as determined under Chapter 11 of the Internal Revenue Code, plus (B) the aggregate amount of all Connecticut taxable gifts, as defined in section 12-643, made by the decedent for all calendar years beginning on or after January 1, 2005. "Connecticut taxable gifts" mean taxable gifts made during a calendar year commencing on or after January 1, 2005, that are: (1) for residents of this state, taxable gifts wherever located, but excepting gifts of real estate or tangible personal property located outside this state, and (2) for nonresidents of this state, gifts of real estate or tangible personal property located within this state. More information is available on the website for the Department of Revenue Services at www.drs.state.ct.us.

7. What Is the Effect of Having Savings or Securities "In Trust For" Another Person? How Do Such Bank Accounts Differ from a Custodial Bank Account for a Minor?

Monies on deposit in a bank account standing in the name of a depositor "in trust for" another become the monies of the named beneficiary immediately upon the death of the depositor.

In 1997, the State Legislature changed the law to permit securities to be similarly owned by one individual "in trust for" another. Like the bank accounts, those securities remain the exclusive property of the owner until death, when they are transferred immediately to the survivor. These bank accounts or securities must be reported on a Connecticut estate tax return.

An alternative way of providing money in an account for the benefit of a minor child is by opening a custodial account under the Uniform Transfers to Minors Act. The depositor could act as a custodian of such monies. However, the monies in a custodial account belong to the minor at all times and can only be used for the minor's benefit. When the minor attains the age of 21, he or she is entitled to receive those monies and may ask the custodian for an accounting of how they were managed. The death of the custodian prior to the beneficiary's reaching the age of 21 may require the probate court to appoint a successor custodian.

8. Is There a Simple Method to Probate a Small Estate?

Yes, if the total assets left by a decedent in his name alone consist of personal property and do not exceed \$20,000. The decedent may own survivorship real estate or other survivorship assets exceeding \$20,000 in value and still qualify for this simple procedure. In such an event, the transfer of both tangible and intangible personal property such

as bank accounts, shares of corporate stock, bonds, unpaid wages, death benefits, insurance proceeds, or motor vehicles* can be passed simply to the surviving spouse or next of kin.

The only requirement is that the surviving spouse or next of kin or some suitable person file an affidavit in the Probate Court stating that the decedent's funeral expenses and other debts have been paid at least to the value of such assets or that such assets are necessary to pay funeral and physicians' expenses. Thereafter, the Judge will confirm that no other probate proceedings have been started and will authorize by a decree the transfer of the personal property to the surviving spouse, next of kin, some suitable person, the funeral director, or physician to the extent needed to pay such bills. A Connecticut estate tax return is also required for a small estate.

*(Note: Under the provisions of C.G.S. §14-16, the owner of a motor vehicle can designate a beneficiary on the registration certificate in writing. In order to obtain ownership of the vehicle after the owner's death, the beneficiary must make application to the Department of Motor Vehicles within 60 days of the date of death.)

9. Who Can Serve as an Executor or Administrator of an Estate? What Duties Does One Have?

An executor or administrator can be anyone: a member of the decedent's family, an attorney, a bank, or a beneficiary of a will. An executor is named in the will and chosen by the person making the will. If that person is capable, the Court must appoint that individual as executor. If there is no will, the selection of an administrator is made by the Court. The law requires that a family member or designee of the family member be chosen, unless it appears to the Court that it would not be in the best interests of the parties concerned, in which case the Court will usually appoint an impartial person or a bank.

10. Is It Necessary to Have a Lawyer or Other Professional Help Probate an Estate or File the Required Tax Returns?

It is often advisable for the fiduciary to obtain professional assistance in connection with the administration of an estate. The Clerk of the Court or the Judge of Probate may provide limited assistance by helping an individual to complete required forms and reports. The Judge will be careful in the type of assistance given, since he or she may be called upon at a later time to adjudicate matters relating to the tax return, an account, or intermediate petitions. It is the fiduciary, however, who is primarily responsible for completing these forms and reports and for taking all of the other steps necessary to settle the estate. A booklet entitled "Guidelines for Administration of Decedents' Estates" is available from the Court of Probate to assist fiduciaries. Responsibilities such as preparation of tax returns and protecting unusual assets frequently require professional help.

11. How Do You Make Application for the Probate of a Decedent's Will?

Any person in possession of any will must deliver such will to the probate court in the town where the decedent had his or domicile within 30 days after the decedent's death. Ordinarily, at the time the will is brought to the probate court, an application for probate of the will is filed with the court, and after a hearing, an executor is named. However, if the decedent left no assets in his or her name that would pass under the will, the will is simply placed on file and not admitted to probate.

12. How Old Can a Will Be and Still Be Good?

A will can be legally binding no matter how old it is. However, certain subsequent events may cause a change in the will's formula of distribution. For example, the subsequent birth or adoption of a child, marriage, divorce, or annulment may alter the will's stated disposition. Therefore, it is extremely important for everyone to review the contents of their wills periodically, especially if such a major life event has occurred.

13. What Can Be Done if a Person Dies and Has a Safe Deposit Box, and a Will May Be in the Box?

If a decedent had a safe deposit box and it is suspected that a will or other important documents are in the safe deposit box, it is possible for a Probate Court to immediately issue an order authorizing a family member or other suitable person to gain access to the safe deposit box. The box will be opened in the presence of a bank officer and the contents cataloged. If a will is discovered, it will then have to be filed in the probate court.

A similar situation might involve a decedent who lived alone in a house or apartment, and no relative can be found to take proper action. The Court has the ability to appoint a temporary administrator immediately in order to safeguard the decedent's belongings and to take other action to protect the estate.

14. When A Person Dies, Are His Assets All "Frozen" and Unavailable to the Family?

In the overwhelming number of cases involving joint and survivorship assets between the decedent and family members, funds are immediately available to the survivors without Court approval. However, assets in the name of the decedent alone may not be used until an executor or administrator is appointed, which, in most cases, takes only one to two weeks. (In an emergency, the Court can provide immediate relief.) Thereafter, such assets may be used to pay proper debts and expenses. A family car may be used immediately with permission of the Court. In addition, if all the heirs consent, an estate can be opened in a single day so that the estate's funds can be accessed without delay.

Even though these assets may be available immediately to the family, with or without Court action, they still must be properly accounted for so that the claims of creditors and the State Tax Department are properly handled.

15. What if a Person Dies Leaving No Will? What Happens to the Property?

If the decedent left property in his own name, then it is necessary for an appropriate person (usually a family member) to make application to the Probate Court for administration of the decedent's estate. Since there is no will, the property is distributed in accordance with the Connecticut laws of descent and distribution. The estate is called "intestate" because there is no will.

16. How Is the Property Distributed When There Is No Will?

If the decedent is survived by:

Spouse, and children* of both decedent and spouse	Spouse takes first \$100,000, + 1/2 of the remainder. Children* take the other 1/2.
Spouse, and children* of decedent, one or more of whom is not the child of the spouse	Spouse takes 1/2. All the children* share the other 1/2 equally.
Spouse and parent or parents (no children**)	Spouse takes first \$100,000 + 3/4 of the remainder. Parent(s) takes the other 1/4.
Spouse only (no children**, no parents)	Spouse takes all.
Children* only (no spouse)	All goes to the children*.
Parent(s) (no spouse, no children**)	All goes to the parent(s).
Brothers* and sisters* (no spouse, no parents, no children**)	All goes to the brothers* and sisters.*
Next of kin (no spouse, no children**, no parents, no brothers** or sisters**)	All goes to the next of kin.

If there is no next of kin, but there is a step-child*, he or she will be next in line to take. If there is no step-child**, all goes to the State of Connecticut.

*If this person(s) has died before the decedent, his or her descendants may take instead.

**or descendants.

17. Does Death Relieve a Family from Making Payment of Monies Owed by a Decedent?

A creditor has a right to look for payment of any outstanding obligation incurred in the decedent's lifetime from those properties owned by the decedent in her name alone. In most cases, creditors and family members agree on the amount that the decedent owed, and payment is made voluntarily by the executor or administrator. However, a creditor may want to protect himself by filing a written claim of the debt with the executor or administrator and, if he has been given a specific written notice by the executor or administrator inviting such a written claim, the creditor must file that claim within the time limited by that notice. The failure of the creditor to file such a claim as requested may very well bar that creditor's right of recovery.

In many instances, properties in the name of the decedent and another or others in survivorship will not be subject to the claims of all creditors against the decedent. However, there are exceptions to this rule that should be carefully considered. For example, if the decedent's estate is not sufficient to pay funeral expenses, debts due for the last illness of the deceased and expenses for settling the estate, and debts due to the State for aid or care to the deceased, the decedent's proportional share of the monies on deposit in a survivorship joint bank or savings account may be subject to payment of those expenses.

18. What Are the Various Costs Involved in Settling a Decedent's Affairs?

Upon the death of any person, some or all of the following costs may be payable to settle the decedent's affairs: (a) probate fees; (b) fees of an executor or administrator; (c) attorneys' fees; and (d) taxes, state or federal.

Probate fees and taxes due are fixed by law. The fees of an executor or administrator and of an attorney are based upon the work efforts of each and are subject to the approval of the Probate Court. Often, members of the family are willing to serve for little or no compensation.

19. What Is the Basis for Computing Probate Charges?

Charges made by the Probate Courts are strictly regulated by statute. They are based on the size of the estate in the decedent's name alone and on the amount that may have been owned with others, such as survivorship property and other taxable transfers. The following is the section that is used to compute probate charges for estates in which proceedings commence **on or after April 1, 1998***:

<i>Basis for Computation of Costs:</i>	<i>Total Costs</i>
\$0 to \$500	\$25.00
\$501 to \$1,000	\$50.00
\$1,000 to \$10,000	\$50, plus 1% of all in excess of \$1,000
\$10,000 to \$500,000	\$150, plus .0035 of all in excess of \$10,000
\$500,000 to \$4,754,000	\$1,865 plus .0025 of all in excess of \$500,000
\$4,754,000 and over	\$12,500

Notes: 1) Any portion of the basis for costs that is determined by property passing to the surviving spouse shall be reduced by 50%. 2) If the basis for costs is less than \$10,000 and a full estate is opened, the minimum cost is \$150.00. 3) In estates where the gross taxable estate is less than \$600,000 in which no succession tax return is required to be filed, a probate fee of .1% shall be charged against non-solely owned real estate, in addition to any other fees.

*Please consult the statutes to compute charges for estates where proceedings commenced before April 1, 1998.

20. How Are Probate Charges Used by the Probate Court?

Statutory charges paid to the Probate Court are used to pay the salaries of the court staff and certain operational expenses. After payment of such costs, the net sum is retained by the Judge as his or her only compensation, subject to an assessment levied by the State of Connecticut. The statute strictly limits the amount a Judge may retain as compensation, and it now permits a Court with insufficient income to meet its reasonable and necessary operating expenses by requesting a subsidy from the Probate Court Administrator.

21. What Is a Probate Court Hearing?

A hearing at the probate court is an opportunity for all family members and other parties in interest to appear at the court to ask questions or to make certain that their views are known. The notice of a hearing should not be ignored if there are any questions on, or objections to, matters being heard.

The law presently mandates at least one hearing on all probated estates. That hearing is usually held at the closing or acceptance of the final accounting by the executor or administrator, unless all parties sign and file with the Court a written waiver acknowledging that they have reviewed the final account and have given it their approval.

Unless all interested parties voluntarily sign a waiver, notice of the hearing is required at the time each estate is opened to pass upon the admission of a will to probate or for the appointment of an administrator.

Other hearings may be necessary at intermediary stages of the proceedings, such as upon a request for an allowance for support of the surviving spouse or children or for the settlement of a doubtful or disputed claim or for the sale of real property.

Probate hearings are normally informal proceedings; however, unresolved or contested matters may require the taking of evidence at a hearing so that the Judge can make a proper determination of facts or law.

22. Probate Appeals

Any person aggrieved by an order, denial, or decree of the Probate Court may appeal to the Superior Court. In general, appeals must be taken within 30 days of the date of the order, denial, or decree.

23. Information and Documents You May Need to Provide to the Probate Court:

Certified copy of Certificate of Death.

Original will and codicil, if any.

A list of names by which the deceased owned real or personal property that will be reported to the Court, either in the inventory or in the Connecticut estate tax return (first, middle, last name).

You will have to indicate whether the decedent or any beneficiary received public assistance or was in a state hospital, including the receipt of benefits under the convalescent care program known as Title 19.

A list of all names and addresses of the decedent's heirs. (Go on to next letter listing if no relatives in the previous class):

- a. Surviving husband or wife and children and, if any, children of a deceased child. (If there is a surviving spouse and no children, the parents of the deceased must be listed);
- b. Parents;
- c. Brothers and sisters and children of deceased brothers and sisters;
- d. Uncles and aunts;
- e. First cousins; if none, then second cousins; and so on;

Names and addresses of those who receive anything under the will or codicil, if additional to those mentioned above.

Listing of all assets left by decedent whether or not in survivorship, including:

- a. Checking or savings accounts (name of bank, account number, name or names on book, balance on date of death including interest);
- b. U.S. War or Savings Bonds (name or names on bonds, series number, number on bonds, face value of bonds, value at date of death);
- c. Corporate Stock (name of corporation, certificate number, common or preferred, number of shares, name or names on certificate, value at date of death);
- d. Real estate (copy of deed; assessed value of real estate, which can be found on real estate tax bill; market value at death);
- e. Automobile (copy of title and/or registration; value at date of death);
- f. Name and fair market value of any business that the deceased owned either totally or in part;
- g. Valuable personal property (such as coin or stamp collections; jewelry, antiques, or art collections);
- h. Policies of insurance not payable to a named beneficiary or any pension or profit-sharing plan for which a death benefit is payable;
- i. Social Security or veterans' benefits to which the deceased was entitled.

List of outstanding bills or debts of deceased, such as:

- a. Medical or hospital expenses and other monies owing for last illness.
- b. Mortgages due (lender's name, location of property, date of mortgage, amount due at date of death);
- c. Loans due (name of lender, amount owed at death);
- d. Unpaid taxes; income, personal property, or real estate;
- e. General obligations (name of creditor, amount due at date of death).
- f. Funeral charges and monument expense.

24. Does a Probate Court Handle Matters Other Than Matters Associated with Decedents' Estates?

Although a Probate Court is commonly thought of as dealing with the distribution of a person's property after death, there are many functions of the Court that assist the living. The Court may be called upon to terminate parental rights when parents are not carrying out parental responsibilities and, in a related matter, hear claims of paternity of unwed fathers. The Court also considers and approves adoptions.

In other cases, a child may need a guardian of his or her estate or person. The guardian of an estate of a minor is appointed by the Judge to oversee monies or properties belonging to a child, while a guardian of the person is appointed to approve the proper care of a child. The appointment of guardians for persons with mental retardation, as well as sterilizations and placements of mentally retarded persons, are also within the jurisdiction of the Courts.

The Court also aids mentally and/or physically incapable persons who are unable to manage or administer their own affairs. In such cases, the Court, after a hearing, appoints a conservator to act on behalf of the incapable person. In addition, the Court is empowered to commit a person suffering from severe mental illness to an appropriate hospital.

The Court also receives and passes on various fiduciaries' accounts, including accounts of conservators, guardians, testamentary trustees, and in some cases, trustees under an inter vivos trust.

Another responsibility of a Probate Judge is to approve or disapprove the marriage of a youth under the age of 16 years. The Court also has jurisdiction to grant a change of name. In addition, as a courtesy to the public, a large number of Courts will assist persons in obtaining passports.

For more specific information on the other areas of probate court jurisdiction, you may wish to consult the other pamphlets published by the Probate Court Administrator:

- *Termination of Parental Rights and Adoption Procedures*
- *Guidelines for Guardianships of Minors*
- *Probate Court Proceedings Involving Persons with Mental Retardation*
- *Guidelines for Conservators*
- *Guidelines for Administration of Decedents' Estates*
- *Understanding Trusts: A Look at Living Trusts and Other Trusts*

Glossary

PROBATE	Broadly, a characterization of the functions of the Probate Court, whether it be the probate of a will, the approval of the accounts of an administrator of a decedent's estate, or any other judicial act within the province of the Court, including guardianships, conservatorships, and the like.
WILL	A written declaration of a person's wishes concerning the distribution of property standing in his or her name after death, executed in accordance with specific legal procedures.
CODICIL	An amendment or addition to a will.
TESTATE	Referring to the estate of a deceased person who leaves a will at death.
INTESTATE	Referring to the estate of a deceased person who dies without leaving a will.
FIDUCIARY	One who holds property in a position of trust for another, such as an executor, administrator, trustee, guardian, or conservator.
EXECUTOR	A person named in a will to manage and settle an estate and to carry out the directions and mandates of the decedent.
ADMINISTRATOR	A person who has been named by the Probate Court to administer and settle the estate of a decedent who dies without leaving a will. The estate will be settled in accordance with the laws of descent and distribution, which are also known as the laws of intestacy.
TRUST	Property, real or personal, held by one party for the benefit of another.
GUARDIAN	A person given the power and duty by a Probate Court to manage the property or provide for the care of the person of a minor child or mentally retarded person.
CONSERVATOR	A person named by the Probate Court to supervise the affairs of another person who is incapable or who needs assistance in managing his or her affairs or caring for himself or herself.
PROBATE BOND	A promise by a fiduciary, usually guaranteed by a third party known as a surety, to replace any funds up to the amount of the bond to fulfill the faithful performance of his or her duties. Often, the surety is an insurance company.
REAL PROPERTY	Real estate such as a home, land, or farm, including the ownership of a condominium unit.
PERSONAL PROPERTY	Property not classified as real property, such as bank accounts, shares of corporate stock, bonds, automobiles, household furnishings and personal effects.